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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,262	07/31/2000	David J. Miller	10001634-1	4178

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FORT COLLINS, CO 80527-2400

EXAMINER

FADOK, MARK A

ART UNIT PAPER NUMBER

3625

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/629,262

Applicant(s)

MILLER, DAVID J.

Examiner

Mark A Fadok

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-7,9-12,14-17,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,9-12,14-17,19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The Examiner is in receipt of Applicant's response to Office Action mailed 9/25/2002, received at the Office 12/12/2002. Acknowledgement is made to the cancellation of claims 3,8,13 and 18 along with the amendment of claims 1,7,and 11 leaving claims 1,2,4-7,9-12, 14-17, 19 and 20 as pending. The Applicant's remarks have been carefully considered, and the USC § has been overcome with the amendment. However, all the other arguments are moot in view of the new grounds for rejection provided below.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

Claims 1,2,4-7,9-12, 14-17, 19 and 20 are rejected under 35 USC 101 because these claims have no connection to the technological arts (i.e. computer, network, data processing, internet, ect.). To overcome this rejection, the examiner recommends that the applicant amend the claims to incorporate limitations directed to the technological arts in the body of the claims. Please note that merely reciting technological limitations in the preamble of the claim is not sufficient to overcome this rejection.

Please note that although claims 11,12,14-17,19 and 20 allude to the use of technology the claims are not explicitly computer executable instructions.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4-7,9-12, 14-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lazarus et al (6,430,539) in view of Applicant's disclosure and Official Notice.

In regards to claims 1,2,4-7, 9 and 10, Lazarus discloses:

generating a symbol; and arranging the symbols spatially, based on the numeric values, receiving a set of numeric values, each associated with parameters,

generating the numeric values based on an Internet communication activity of the customer.

converting initial data based on the communication activity to a limited data set of the numeric values.

receiving additional data based on further communication activity, and modifying the numeric values based on the additional data.

each symbol includes a characteristic indicating a numeric value of a selected parameter.

arranging the symbols includes generating a representation of a three-dimensional array.

selecting a subgroup of customers based on a spatial region in which their corresponding symbols reside.

(see at least the summary and Fig 1a and 1b),

Lazarus does not specifically mention including a recency indicator, and an advocacy indicator for each customer. The applicant has stated that the use of recency, monetary and advocacy characteristics in marketing analysis is old and well known in the art (specification, page 2 lines 1-5). It would be obvious to a person of ordinary skill in the art to include in Lazarus the use of recency, monetary and advocacy characteristics in as taught by the disclosure, because these indicators are readily available from most profiles and are useful in predicting behavior.

Lazarus also does not specifically mention characteristics selected from a group comprising motion, color, size, shape, length, direction, intensity. It is old and well known in the art that information may be displayed in numerous different manners including ones that signifying characteristics such as motion, color, size, shape, length, direction, intensity. It would have be obvious to a person of ordinary skill in the art to graphically display the predictive modeling of Lazarus using motion, color, size, shape, length, direction, intensity, because this would improve the visualization of the data in a

Art Unit: 3625

manner that a human operator could more easily understand and allow for better distribution of incentives.

In regards to claims 11, 12, 14-17, 19 and 20, see response to claims 1, 2, 4-7, 9 and 10 above.

***Response to Arguments***

Applicant's arguments with respect to claims 1, 2, 4-7, 9-12, 14-17, 19 and 20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(703) 605-4252**. The examiner can normally be reached Monday thru Friday 8:00 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(703) 308-1344**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 308-1113**.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

***Washington D.C. 20231***

or faxed to:

**(703)305-7687** [Official communications; including  
After Final communications labeled  
"Box AF"]

**(703) 746-7206** [Informal/Draft communications, labeled  
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal  
Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.



Mark Fadok

Patent Examiner



WYNN W. COGGINS  
SUPERVISORY PATENT EXAMINER  
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